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IN THE SUPREME COURT
of the
STATE OF UTAH

WILLIE OLEN SCOTT,

Appellant.

vs.

GEORGE BECKSTEAD,

Sheriff of Salt Lake County, State
of Utah,

Respondent,

FILED

1902

Supreme Court

Case No.
9575

BRIEF OF APPELLANT

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charged with the crime is Willie Olen Scott. Also, the Criminal Indictment and True Bill of Tennessee, reveals the name of William O. Scott. Further, the Tennessee copias reveals to the name of William O. Scott.

After admission of the aforementioned exhibits over the Defendant's objection the Defendant failed to produce any further evidence as to the identity of the person sought to be extradited or any further evidence indicating that the Plaintiff was a fugitive from justice. The record shows that the Defendant submitted the matter to the court on the apparent sufficiency of the two exhibits. (R-8) The Petitioner submitted evidence to the lower court that the Plaintiff was incarcerated in the State of Utah under the name of Willie Olen Scott (R-11). Further, that the Plaintiff testified in his own behalf (R-14) and testified that his true and legal name was Willie Olen Scott (R-14), that he had never been known as William O. Scott (R-14), and had not been in the State of Tennessee on the 2nd day of December, 1955 (R-14).

On cross-examination, the Petitioner testified that his birth certificate does not bear the name William O. Scott (R-15). Further, that during his tour of duty in the Army and discharge therefrom, that he went under the name of Willie Olen Scott.

Petitioner submitted evidence of a transcript marked as Exhibit 3, said transcript being the testimony of one

Norman Hunter that the Plaintiff was not in the State of Tennessee at the time of the alleged crime. The transcript showed that the Plaintiff was under the surveillance of Norman Hunter, agent for the Oklahoma State Crime Bureau from the 20th day of November, 1955 to the 4th day of December, 1955.

Upon the admittance of the evidence above indicated, the Plaintiff and Defendant submitted the matter to the court wherein the court denied the discharge of the Petitioner pursuant to the Petitioner's writ.

DISPOSITION MADE BY THE LOWER COURT

The hearing on Plaintiff-Appellant's Writ of Habeas Corpus was held on the 27th day of October, 1961 before the Honorable Joseph G. Jeppson, Judge of the Third District Court, Salt Lake County, State of Utah. Upon hearing of the evidence and arguments by counsel for the respective parties, the Judge denied the Petitioner discharge pursuant to writ.

RELIEF SOUGHT ON APPEAL

Relief sought on appeal of reversal of trial court's judgment.

STATEMENT OF POINTS

POINT 1

THAT THE TRIAL COURT ERRED IN DENYING PLAINTIFF'S DISCHARGE ON THE GROUNDS THAT THE DEFENDANT FAILED TO PROVE THAT THE PETITIONER IS THE SAME PERSON SOUGHT TO BE EXTRADITED BY THE STATE OF TENNESSEE.

POINT 2.

THAT THE COURT ERRED IN DENYING DISCHARGE OF THE PETITIONER IN THAT THE EVIDENCE CLEARLY AND CONVINCINGLY PROVED THAT THE PLAINTIFF WAS NOT A FUGITIVE FROM JUSTICE.

ARGUMENT

POINT 1

THAT THE TRIAL COURT ERRED IN DENYING PLAINTIFF'S DISCHARGE ON THE GROUNDS THAT THE DEFENDANT FAILED TO PROVE THAT THE PETITIONER IS THE SAME PERSON SOUGHT TO BE EXTRADITED BY THE STATE OF TENNESSEE.

The court erred in denying Plaintiff's discharge on the grounds that the Defendant failed to prove that the Petitioner is the same person sought to be extradited by the State of Tennessee. It may be stated that upon application of a Writ of Habeas Corpus to test the

legality of the detention in the proceedings for Habeas Corpus, that the question of identity is one which may be considered. See *ex parte M. B. Jowell* (1920) 223 S. W. 456, 11 A.L.R. 1407, *Holland vs. State*, 53 Texas Criminal Reports, 301, 108 S. W. 1181, wherein the court in the latter case stated, "If the alleged fugitive raises the question of identity, and a finding of the District Judge that he is the party wanted, will be sustained if the evidence supports such finding, no matter what name he went by in this State." Also see 25 *Am. Jur. Sec.* 70. Further, it may be stated as a general principal of law that the burden of proving the identity of the person rests upon those seeking his deportation, where the person denies he is the person sought to be wanted.

Evidence is always admissible to show that the accused is not the person named in the warrant or indictment, and in such an event his identity with the person named in the warrant must be clearly established. *Ex Parte Massee*, 95 S.C. 315, 79 S.E. 97, 26 L.R.A. (N.S. 781) 22 *Am. Jur. Sec.* 50.

The courts have indicated that there exists a prima facie case by the State wherein the paper requesting the Defendant to be extradited are properly authenticated and executed. That in establishing the prima facie case the State has met its burden and the burden of coming forward is upon the Petitioner and the Petitioner must with sufficient proof overcome such prima facie case.

See *ex parte Freeman*, 80 Ariz. 21, 291 P2 795, *ex parte Arrington* (Mo.) 270 S. W. 2nd 39, *Hagel vs. Hendricks* (Mo. Appeals), 302 S. W. 323, (1957) and *Re Action*, 90 Ohio 100, 013 S.E. 2nd 577, (1949), wherein the Ohio court stated that the Governor of the asylum state issues his warrant and when this is done it is prima facie evidence of all that is recited thereon.

It is apparent from the decisions rendered that when the identity of the person sought to be extradited has been questioned, the court uniformly permitted evidence as to identity aside from the documents themselves. See 84 A.L.R. and cases cited thereunder. Thus, *In Re McPhunn*, there was testimony by the officer who came with the warrant and other papers designed to sustain the charge held to establish the identity of the prisoner. Also, *Re Charleston* (1888; D.C.) 24 Fed. 531, wherein the identity was established by the Prisoner's own admission that he was the person named in the Complaint and that he executed the note alleged to be forged; also *ex parte Chung Kin Tow* (1914; D.C.) 218 Fed. 185, wherein the identity was established by the fair preponderance of the evidence; *State vs. ex rel Meyers vs. Allen* (1920) 83 Fla. 655, 92 S. 155, wherein the testimony of two witnesses which was uncontradicted was submitted; also *People ex rel. Draper vs. Peterton* 1897) 17 Hun. 199 affirmed in [1879] 77 N.Y. 245), wherein the identity was proved in evidence although an error in the Christian name appeared on the papers. Other cases have clearly

established the rule that the use of photographs attached to affidavits or depositions taken in the demanding state in support of the identification of the prisoner has been held to be proper when the identity has been questioned. See A.L.R. 343 and cases cited thereunder. In the case of *Ryan vs. Rogers* (1923) 21 Wyo. 311, 132 P. 95, wherein the requisition papers named the alleged fugitive as "Charles T. Crane, otherwise known as James Ryan," the State of Wyoming offered testimony of one Mrs. Hope L. McEldowney who testified as to the identification of the Petitioner as the person demanded by the requisition and named in the indictment. The Petitioner submitted evidence which contradicted Mrs. McEldowney's testimony. The Wyoming court held that the evidence that the Petitioner was not the person sought was clearly and satisfactorily established and denied extradition on that ground. In the case of *In re Scrafford* (1891) 59 Hun. 320, 120 N. Y. Supp. 943, the Petitioner's own witness testified that the Petitioner was known as the same person by the name used in the rendition papers. The court held that this was sufficient evidence and denied discharge. In the case of *Holland vs. State* (1908) 53 Texas Criminal Law Reports 301, 108 S.W. 1181, the court applied the doctrine of *idem sonans* to the names of "George Harland" and "George Holland" and applied this presumption in the absence of any evidence to the contrary and denied discharge. The principle of *idem sonans* has

been held not to apply to the name of "William" and "Willis." *Thornily v. Prentice*, 121 Iowa 89, 96 N.W. 728, 100 Am. St. Rep. 317. In the case of *Fernandez v. Phillips* (1925) 268 U. S. 311, 69 Law Ed. 970, 45 S. Ct., 541 the warrant for arrest named the accused merely by his first and middle name and the court upheld the warrant since there was sufficient other evidence as to the identity of the petitioner. Mere mistakes in spelling or discrepancies in names appearing in the requisition papers or warrant will not defeat rendition, provided there is sufficient testimony identifying the accused with the person named in such papers. 22 Am. Jur., Sec. 38, p. 276.

Thus, the Petitioner in the case at bar respectfully submits that under the cases above enumerated and under the law as it exists at the present time, it was incumbent upon the Defendant to submit proof of the identity of the accused when the identity of the accused was disputed. Further, the Petitioner submits that when there exists an obvious discrepancy in the requisition papers themselves, it is incumbent upon the Defendant to submit outside proof of identity.

The discrepancy in the name in the case at bar is apparent. Defendant's Exhibit one indicates that the Petition for Requisition made to the Governor of Tennessee states in Paragraph four that WILLIAM O. SCOTT is the person named in the copy of the Warrant

Criminal Indictment and Capius as the person sought. Further, it is indicated that said copies were attached to the Petition for Requisition. The court's attention is called to the fact that the State Warrant attached thereto refers to WILLIE OLEN SCOTT. The indictment refers to WILLIAM O. SCOTT. The Capius refers to and uses the name WILLIAM O. SCOTT. Paragraph four of the Requisition indicates that WILLIAM O. SCOTT committed armed robbery. Paragraph six alleges that WILLIAM O. SCOTT is known or believed to be in the Utah State Prison and that the Petitioner received a letter from Clarence Dent, Chief Records Officers of the Utah State Prison, and advises that WILLIAM O. SCOTT referred to in said letter as WILLIE O. SCOTT is a prisoner in the State of Utah.

Under the discrepancies above noted, the Petitioner states that the Defendant was obliged to submit other evidence that the Petitioner was the same person requested in the requisition papers. The above cases cited clearly show that this burden is not so onerous or overwhelming to the Defendant and the cases further indicate that the Defendant's right to submit evidence as to the identity of the accused is undisputed. See 84 A.L.R. 346. The petitioner has found no case wherein the court has held in the face of the apparent discrepancy in names that the prima facie case was sufficient to warrant that the identity of the accused had been sufficiently established.

However, if the court feels that the prima facie case established by the rendition papers is sufficient, then the court must consider the evidence submitted by the Petitioner in the lower court. The court's attention is called to the fact that at the hearing in the lower court, the Petitioner took the stand (R-14) and testified that his name was WILLIE OLEN SCOTT and further that he had never been known as WILLIAM O. SCOTT. (R-14). Also, that he was not in the State of Tennessee on the 2nd day of December, 1955 (R-14). On cross-examination, the petitioner testified that to the best of his knowledge his birth certificate was not made out in the name of WILLIAM O. SCOTT. (R-15). Also, that during his tour of duty in the United States Army and discharge therefrom that he went under the name of WILLIE OLEN SCOTT. In the face of such evidence, which evidence is uncontradicted by the Defendant, the Petitioner has by the fair preponderance of the evidence proved that he was not the person sought by the requisition papers from the State of Tennessee.

Under such circumstances, it has been uniformly held that the Petitioner should be discharged in the absence of any evidence by the asylum state showing that the Petitioner was the same person sought by the demanding State.

Mere mistakes in spelling or discrepancies in names appearing in the requisition papers or warrant will not

defeat rendition, provided there is sufficient testimony identifying the accused with the person named in such papers. 22 Am. Jur. Sec. 38, p. 276. Evidence is always admissible to show that the accused is not the person named in the warrant or indictment, and in such an event his identity with the person named in the warrant must be clearly established. *Ex parte Massee*, 95 S. C. 315, 79 S. E. 97, 26 L. R. A. (N. S. 781) 22 Am. Jur. Sec. 50.

POINT 2.

THAT THE COURT ERRED IN DENYING DISCHARGE OF THE PETITIONER IN THAT THE EVIDENCE CLEARLY AND CONVINCINGLY PROVED THAT THE PLAINTIFF WAS NOT A FUGITIVE FROM JUSTICE.

The majority of the cases support the general rule that one held upon a governor's warrant for extradition to another state may upon Habeas Corpus proceedings prove absence from the demanding state at the time of the alleged crime as a fact defeating the jurisdiction of the asylum state to render him to demanding state for trial, or in other words to prove that he was not a fugitive from justice within the United States Constitution provision whereby extradition is provided for. See 61 A.L.R. 716. See *In re Lonardo* (1928) 272 P. 1066. In the case of *In re Lonardo*, supra, the evidence established that the petitioner was in San Francisco at

the time and before and after the alleged crime. This evidence consisted of affidavits of ten persons to that effect. In the case of *State vs. Gains vs. Westhughes* (1928) 318 Mo. 928, 2 S. W. 2nd 612, the court allowed evidence tending to show that the petitioner was not actually present in the demanding state at the time of the commission of the alleged offense.

In regards to the degree and character of proof the cases do not support any definite rule as to the degree and character of proof required in order to defeat the prima facie case made by the governor's warrant for extradition. The language the courts have used is that the burden is upon the petitioner to prove *clearly and satisfactorily* as a condition of his release that he was not in the demanding state at the time of the commission of the crime for which he was accused. If the evidence is merely contradictory, the accused person is not entitled to discharge. 22 Am. Jur. 54, p. 294. See *State ex rel. Rogers vs. Merename* (1927) 172 Minn. 401, 215 N. W. 863. In that case the court held that the testimony of four witnesses beside the petitioner himself did not sustain the burden of proving the petitioner's absense. In the case of *People ex rel. Sherman v. Bar* (1928) 131 Misc. 915, 229 N.Y. Supp. 268, the Court held that the burden upon the petitioner was to show by conclusive evidence he was not within the demanding state. The court further deemed that the evidence became conclusive when it estab-

lished beyond a reasonable doubt the existence of the fact at issue. The cases which have dealt with the burden of proof clearly establish that the burden of proof lies with the petitioner to show the absence from the demanding state at the time of the alleged crime, in order to overcome the prima facie case made by the governor's warrant. See *State ex rel. Gains vs. Westhughes* (1928) *supra*.

There does appear confusion as to the evidence admitted to prove alibi and evidence to prove that the petitioner was not within the jurisdiction. This is clearly noted in *Grace vs. Doggan* 151 Miss. 267, 117 S. 596. (1928). In the case of *Appleyard vs. Mass.* 203 U. S. 222, 51 Lawyer's Ed. 161, 27 Sup. Ct. Reporters, 122, 7 Annotated Cases 1073, the Supreme Court of the United States held that in issuing an executive warrant two facts must appear to the governor of the state to whom a demand for extradition warrant is presented.

“First, that the person demanded is substantially charged with the crime in the demanding state and second the persons demanded is a fugitive from justice, the latter question being one of fact to be decided by the governor. How far the governor's decision may be reviewed judiciously in a proceeding in Writ of Habeas Corpus or whether it is not conclusive of questions is not settled by harmonious judicial decisions, nor by any authoritative decisions of this court. It is

conceded that the determination of the fact by the Executive of the State in issuing his warrant for arrest upon demand made on that ground whether the Writ contains a recital of express finding to that effect or not, must be regarded as sufficient to justify the removal until the presumption in its favor is overruled by contrary proof. Also see *ex parte Reggel*, 114 U.S. 642, 29 Lawyer's Ed. 250, 5 S. Ct. Reports 1148, 5 Am. Cr. Reports 218."

In the case of *ex parte Shoemaker* (1914) 25 Cal. App. 551, 144 P. 985, Petition for rehearing denied (1924), the petitioner filed a Writ of Habeas Corpus to contest the extradition proceeding from the State of Illinois wherein it was alleged that he was guilty of crimes of conspiracy and larceny, said crimes to have been committed in the City of Chicago, State of Illinois on the 8th day of June, 1912. This case illustrates a good example of the conflict between evidence as to an alibi evidence that the petitioner was not a fugitive from justice. The court struck down the Attorney's General's argument in the case wherein the attorney general stated that the question involved the guilt or innocence of a crime and thus he could not set up the testimony of the alibi. The court, in striking down the Attorney General's argument, indicated that the question presented in this proceeding is not whether the Petitioner was present at the scene of the alleged crime but whether he was within the borders of the demanding state at the time said crime was committed. Obviously, if he was not in the said state at the said time he cannot be a fugitive

from justice within the meaning of the Constitution and the laws of the United States authorizing the extradition of fugitives from justice. The court quoted *Hiate vs. Crockrand* 188 U. S. 691, 23 S. Ct. 457, 47 Lawyer's Ed. 657. The court further went on to cite the case of *People vs. McAughlin* 145 App. Div. 513, 130 N. Y. Supp. 458. A New York court struck the Attorney General's argument as being unsound and stated,

“an alibi in its general features consists of proof that the Defendant was not at the scene of the crime at the time of its commission. Proof that the Prisoner was not in the demanding state at the time of the commission of the crime is necessary proof that he was not at the scene of the crime. But the question involved in extradition proceedings is not whether the Defendant was at the scene of the crime at the time of its commission, but whether he was anywhere within the demanding state when the crime was committed. The latter question had nothing to do with the guilt or innocence, but it has all to do with the question of whether the prisoner has fled from the demanding state, and therefore, is a fugitive from justice.”

In the California case the Attorney General submitted certain affidavits to prove that the Petitioner was within the State of Illinois 18 days prior, and approximately three weeks subsequent, to the day upon which the larceny with which he was charged was com-

mitted. The California Court indicated that the circumstances cannot be said to go any further than to show he might have been in Illinois on the 8th day of June. The court further went on for the sake of argument to concede that the state had proven that the Petitioner was "fugitive from justice" from the State of Illinois.

"However, after considering the petitioner's affidavit together with the affidavit of his wife which affidavit indicated that he was not in the State of Illinois and stated that situation confronting the court in such that either the court must give full weight to the proof adduced by the Petitioner or hold that from such proof there being practically no showing by the Respondent to justify a contrary view there at least arises grave doubt as to the presence of the Petitioner within the boundaries of the State of Illinois on the day that the alleged commission of the crime charged in the indictment as to generate and support the conviction that to lend judicial sanction to his removal under such circumstances would involve an unlawful and wrongful menace to an invasion of his inalienable Constitutional rights." See p. 990.

In the case at Bar, the Petitioner's testimony clearly showed that he was not within jurisdictional limits of the demanding state at the time of the alleged crime (R-14). Further, Petitioner submitted into evidence the testimony of one Norman Hunter, agent of the Oklahoma, State Crime Bureau, taken in the case of *State of Utah*

v. Willie Olen Scott, Third District Court, Salt Lake County, case No. 15023, wherein said Norman Hunter testified that he had the petitioner under surveillance in the State of Oklahoma from 20 Nov. to 4 Dec. 1955. It should be observed that the above evidence was undisputed and uncontroverted.

The Petitioner respectfully submits that the Petitioner has clearly and satisfactorily shown that he was not in the demanding state and thus not a fugitive from justice. There being no evidence to the contrary, the Trail Court erred failing to find that the Petitioner had sufficiently met his burden and in failing to grant the Petitioner discharge.

CONCLUSION

The Defendant failed in meeting the burden of proof before the lower court as to the identity of the accused. The Defendant was obligated to come forward with independent evidence as the identity of the accused and having relied solely upon the prima facie case of the Governor's warrant, in face of the Petitioner's testimony, which was uncontradicted, the Defendant failed to sufficiently establish the identity of the person named in the Governor's warrant. Further, the evidence and testimony of the Petitioner clearly shows that he was not a fugitive from justice.